

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHRISTINA HECTOR, CALLIE WALCK,)	
MATT WALKENHORST, JARED)	
WEHMEYER, and NICOLE CASPAR)	
)	Case No.: 4:18-cv-01916-NCC
Plaintiffs,)	
)	
vs.)	
)	
MITCH, LLC, SHANNON BURKETT, and)	
KAREN EVERS MAN)	
)	
)	
Defendants.)	

DEFENDANTS' MOTION FOR LEAVE TO AMEND PLEADINGS
TO FILE COUNTERCLAIM

COME NOW Defendants, Mitch LLC, Karen Eversman, and Shannon Burkett, and move the Court for leave to amend their pleadings by filing a Counterclaim against Plaintiffs Christina Hector, Callie Walck, Matt Walkenhorst, Jared Wehmeyer, and Nicole Casper, pursuant to Federal Rule of Civil Procedure 13(e).

Defendants ask the court for leave to amend their pleadings to file a Counterclaim against Plaintiffs for the following reasons:

1. During the course of this lawsuit, and after Defendants filed their Answer, Defendants learned:
 - a. Plaintiffs have publicized that they initiated this lawsuit for the improper and collateral purpose of attempting to force Mitch LLC to close and cease operating to further Plaintiffs' improper and collateral purpose of taking Defendants'

customers and clients, as well as clients of other independent contractors, who were not Plaintiffs' customers or clients;

- b. Plaintiffs also publicized that they initiated this lawsuit because some or all of them failed to file their tax returns and failed to pay taxes they owed. Plaintiffs created their individual tax problems by failing to file and pay their taxes;
- c. With this lawsuit, Plaintiffs seek to excuse and avoid their legal responsibilities and shift their tax obligations and liabilities to Defendants. Had Plaintiffs properly filed their tax returns and paid their tax liabilities, there would be no basis for claiming any damages against Defendants;
- d. Plaintiffs are attempting to use this frivolous lawsuit and the Defendants' expense of defending Plaintiffs' frivolous lawsuit to create leverage seeking to force Mitch LLC, a young, struggling, small business, to pay Plaintiffs' tax liabilities; and
- e. Plaintiffs' lawsuit is an improper use of the legal system, attempting to extract money from Defendants and extricate Plaintiffs from the legal problems and debts Plaintiffs created.

2. Based on this information, Defendants seek leave to file their counterclaim against Plaintiffs alleging Abuse of Process. A copy of Defendants' Counterclaim is attached hereto.

3. Defendants filed this motion for leave prior to the Court's May 1, 2019, deadline to amend pleadings.

4. Federal Rule of Civil Procedure Rule 15(a) governs motions for leave to amend pleadings and supports the liberal granting of such motions "when justice so requires." Fed. R. Civ. P. 15(a)(2).

5. Allowing Defendants to file their Counterclaim prior to the deadline for amending pleadings will not result in prejudice to the Plaintiffs. *See Popp Telecom v. Am. Sharecom, Inc.*, 210 F.3d 928, 943 (8th Cir. 2000) (given the courts' liberal viewpoint towards leave to amend, it should normally be granted absent good reason for a denial; classic "good reasons" for rejecting an amendment are: undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of amendment).

For the foregoing reasons, Defendants move the Court for leave to amend their pleadings and file their Counterclaim against Plaintiffs.

Respectfully submitted,

HARRIS DOWELL FISHER & YOUNG, L.C.

By: /s/ Fred A. Ricks, Jr.

Fred A. Ricks, Jr., #31663MO
Elizabeth A. Johnson #49193MO
15400 S. Outer 40, Suite 202
Chesterfield, MO 63017
Phone: (636) 532-0300
Facsimile: (636) 532-0246
far@harrisdowell.com
Attorney for Defendants

CERTIFICATE OF SERVICE

I certify that on April 23, 2019, the foregoing document was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system on all counsel of record, as follows:

BECK OSTROM SWEET LLC

Jonathan P. Beck, #52439MO

3500 Magnolia Ave.

St. Louis, MO 63118

(314) 772-2889

jbeck@bos.law

/s/ Fred A. Ricks, Jr.